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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,974	02/08/2002	Lhing-Yew Li		3799

45453 7590 11/22/2006

BUCHANAN INGERSOLL PC
(ARCHER DANIELS MIDLAND COMPANY)
301 GRANT STREET, 20TH FLOOR
PITTSBURGH, PA 15219

EXAMINER

STEADMAN, DAVID J

ART UNIT	PAPER NUMBER
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1656

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/067,974	LI ET AL.	
	Examiner	Art Unit	
	David J. Steadman	1656	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 01 November 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 44.
Claim(s) objected to: 34-36.
Claim(s) rejected: 1-13, 15-23, 26-33, 37-39 and 43.
Claim(s) withdrawn from consideration: 24 and 40-42.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


David J. Steadman, Ph.D.
Primary Examiner
Art Unit: 1656

Continuation of 3. NOTE: The amendment has not been entered as it raises new issues that would require further consideration and raises the issue of new matter. Regarding issues that require further consideration, it is noted that the amendment would require a new rejection of claims 34, 35, and 36 under 35 U.S.C. 112, first paragraph, for reasons set forth in the Office action mailed 1 May 2006 (beginning at p. 7, paragraphs 15-16). Also, it is unclear as to the scope of claimed host cell. For example, is the host cell of claims 34, 35, and 36 meant to be limited to the deposited host cell, which would comprise a vector having a defined nucleic acid sequence, or is it intended as being the deposited host cell further comprising a vector having variants of SEQ ID NO:1, 3, 5, and 7 as encompassed by the claims? Regarding new matter, it is noted that the claims recite limitations that are not supported by the application as filed. For example, the examiner can find no support for the limitations as recited in parts (a) to (d) of claims 34, 35, and 36. In the instant response applicant states, "[t]he amendments to claims 34-36 involve incorporation of the limitations of the claims from which those claims depended" and "[s]upport for those amendments is the same as support for the amendments made and accepted in the underlying claims" (instant response at p. 7, top). However, as noted in the Office action mailed on 1 May 2006 (p. 6, paragraph 14), the examiner can find no support for these limitations. Further, while the specification provides support for the recited deposited host cells of claims 34, 35, and 36, the examiner can find no support for the combination of limitations as recited in claims 34, 35, and 36. For example, the specification discloses deposit NRRL-B30410 as being a *Corynebacterium* transformed with vector pK184-KDBH (specification at p. 32, paragraph 109), however, the specification fails to provide support for NRRL-B30410 comprising any variant of SEQ ID NO:1, 3, 5, and 7 as encompassed by the claims.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's amendment filed 1 November 2006 is acknowledged and has been fully considered. The amendment would appear to overcome the objection at paragraphs 7-8, the rejection under 35 USC 112, second paragraph, at paragraphs 9-10, and the new matter rejections under 35 USC 112, first paragraph at paragraphs 11, 12, 13 of the Office action. However, for the reasons noted above, the amendment has not been entered. In view of the non-entry of the amendment, the rejections of record are maintained for reasons noted in the Office action mailed on 1 May 2006 and the application is not in condition for allowance.